UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 17, 2017 at 1:00 p.m.

1.	17-24701-B-13 SCF-1	TONIA BRAEMER Nikki Farris	OBJECTION TO CONFIRMATION OF PLAN BY OCWEN LOAN SERVICING, LLC 8-24-17 [13]

Tentative Ruling: The Objection to Confirmation of Debtor's Chapter 13 Plan of Reorganization was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan.

Objecting creditor Ocwen Loan Servicing, LLC objects to confirmation on grounds that the Debtor's plan does not provide for treatment of its secured claim on real property located at 23 Dean Way, Chico, California ("Subject Property").

Debtor filed a response stating that the Subject Property was surrendered in Debtor's previous Chapter 7 bankruptcy filed July 27, 2009, and which was discharged on December 9, 2009. *See* dkt. 20. The court finds this to be true.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed July 18, 2017, is confirmed.

The court will enter an appropriate minute order.

2. 17-25301-B-13 TILLI RASHAD WILLIAMS
Aubrey L. Jacobsen

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC
9-28-17 [18]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

Objecting creditor Nationstar Mortgage, LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $1,819.21 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed August 10, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

3. 17-22702-B-13 CHRISTOPHER CANTERBURY AND REBECCA SCHINDLER
NF-2 Nikki Farris

MOTION TO CONFIRM PLAN
8-23-17 [35]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The Motion to Confirm Second Mended Chapter 13 Plan Dated August 23, 2017, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the second amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 23, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

4. 14-21111-B-7 JPJ-3 **Thru #5**
BARBARA STELTER
Mary D. Anderson
CONTINUED MOTION TO RECONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
8-8-17 [109]

CASE CONVERTED: 09/27/2017

Final Ruling: No appearance at the October 17, 2017, hearing is required. The case was converted to a Chapter 7 on September 27, 2017.

The court will enter an appropriate minute order.

5. 14-21111-B-7 MDA-5
BARBARA STELTER
Mary D. Anderson
MOTION TO MODIFY PLAN
9-11-17 [121]

CASE CONVERTED: 09/27/2017

Final Ruling: No appearance at the October 17, 2017, hearing is required. The case was converted to a Chapter 7 on September 27, 2017.

The court will enter an appropriate minute order.

6. 17-25411-B-13 JAMES/LILLIE JOHNSON
MDE-1 Mary Ellen Terranella
Thru #7

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
9-13-17 [23]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan.

Objecting creditor Deutsche Bank National Trust Company holds a deed of trust secured by the Debtors' residence located at 2429 Topgallant Court, Fairfield, California. The creditor asserts $67,484.58 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed August 16, 2017, is confirmed.

The court will enter an appropriate minute order.

7. 17-25411-B-13 JAMES/LILLIE JOHNSON
RAS-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
9-5-17 [18]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan.

Objecting creditor Deutsche Bank National Trust Company holds a deed of trust secured by the Debtors' residence located at 2796 Elmhurst Circle, Fairfield, California. The creditor asserts $46,478.82 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed August 16, 2017, is confirmed.

The court will enter an appropriate minute order.

8. 17-26211-B-13 DOUGLAS/KIM JACOBS MOTION TO EXTEND AUTOMATIC STAY
SS-1 Scott D. Shumaker 9-26-17 [13]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to deny without prejudice the motion to extend automatic stay.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on June 26, 2017, due to failure to make plan payments (case no. 16-25935, dkts. 135, 138). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors assert that the previous plan was filed in an effort to save their home. Debtors contend that their circumstances have changed because Joint Debtor gained part-time employment in December 2016 and more permanent employment in August 2017 working a minimum of 4 days a week. Debtors state that the previous case failed because Joint Debtor lacked adequate income and resorted to gambling. Joint Debtor contends that she understands the value of employment and no longer has the need to try and augment Debtor's income to make ends meet.

The Debtors have not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith for the court to extend the automatic stay. The Debtors assert that Joint Debtor no longer gambles because she has gained employment and no longer has the need to augment her spouse's income. But Joint Debtor was already employed part-time in December 2016 yet nonetheless the Debtors fell behind on plan payments in the previous bankruptcy case. Of greater concern is that the Debtors describe the gambling problem as an "addiction" in the joint declaration. However, they provide no evidence that the addiction is cured or even under current treatment.

The court is not persuaded that the presumption of bad faith has been sufficiently rebutted to extend the automatic stay. The motion is denied without prejudice.

The court will enter an appropriate minute order.

9. 13-28712-B-13 PETE/ERLINDA PELIMIANO MOTION TO MODIFY PLAN
EJV-1 Eric J. Gravel 8-28-17 [28]

Tentative Ruling: The Motion to Confirm Modified Chapter 12 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Response having been filed by the Trustee, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state that a total of $16,588.94 has been paid to the Trustee through September 2017 and commencing October 25, 2017, and that monthly payments shall be $281.36 for the remainder of the 60-month plan.

The modified plan filed on August 28, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

10. 17-25416-B-13 AP-1 **Thru #11**

RONALD SHAVER
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC HOLDINGS, LLC
9-28-17 [23]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection and not confirm the plan for reasons stated at Item #11.

Objecting creditor Pennymac Holdings, LLC holds a deed of trust secured by the Debtor's residence. The creditor asserts $33,865.57 in pre-petition arrearages but has not yet filed a proof of claim. The creditor has filed as exhibits the note, deed of trust, and assignment but provides no evidence to support the amount the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed August 30, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #11. The objection is overruled but the plan is not confirmed.

The court will enter an appropriate minute order.

11. 17-25416-B-13 JPJ-1

RONALD SHAVER
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-28-17 [27]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,300.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fourth, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. §

521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Fifth, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(a)(4). Debtor indicates on Schedule C that he intends to use California Code of Civil Procedure § 704 to claim his exemptions but fails to claim any dollar amounts under the exemption code on Schedule A/B. The plan does not list any unsecured priority debts and proposes to pay 0% dividend to general unsecured creditors, which Debtor lists as $0.00.

Sixth, it cannot be determined what treatment the Debtor intends for each of his three different properties listed on Schedule A due to inconsistencies on Schedules A/B, D, E/F, I, and the plan. It cannot be determined whether each of the three properties have any equity.

Seventh, the Debtor does not appear to have the ability to fund the plan. Debtor's Schedule J, Line #23, shows a monthly net income of -$1,264.00. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Eighth, the plan payment in the amount of $1,300.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $5,049.63. The plan does not comply with Section 4.02 of the mandatory form plan.

Ninth, the Debtor has not amended Questions #5, and #6 on the Statement of Financial Affairs to show correct amounts as requested at the meeting of creditors on September 21, 2017. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed August 30, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

12. 16-20018-B-13 JOJIE GOOSELAW MOTION TO REFINANCE
PGM-6 Peter G. Macaluso 9-12-17 [105]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The Motion for Order Approving Refinance of Loan has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion.

Debtor seeks court approval to refinance her residence located at 1701 Baines Avenue, Sacramento, California ("Property"). Wells Fargo Bank, N.A. holds the first deed of trust against the property secured by a note. The current monthly mortgage payment is $2,311.85. Debtor has been offered to refinance the first mortgage by Finance of America Mortgage, LLC. The refinance of the residence will be on the following terms: amount financed $380,545.00; term of 30 years; interest rate of 4.250%; payment of $2,775.89 (inclusive of taxes and insurance). The Debtor intends to use the refinance to complete plan payments in month 21.

The motion is supported by the Declaration of Paula Raquel. The Declaration affirms Debtor's desire to obtain the post-petition financing. Wells Fargo Bank, N.A. has also filed a non-opposition to the Debtor's motion.

The repayment of the new loan does not appear to unduly jeopardize the Debtor's performance of the plan dated January 10, 2017. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

The court will enter an appropriate minute order.

13. 17-25325-B-13 JONATHAN GARCIA
JPJ-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
9-27-17 [34]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor did not appear at the meeting of creditors set for September 21, 2017, as required pursuant to 11 U.S.C. § 343.

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $250.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The plan filed August 27, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

14. 16-22826-B-13 DEBBIE BARKER MOTION TO MODIFY PLAN
MRL-2 Mikalah R. Liviakis 8-24-17 [55]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The Motion to Confirm Debtor's Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on August 24, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

15. 17-26529-B-13 JOSE/MAGDALENA CARMONA
MRL-1 Mikalah R. Liviakis

MOTION TO VALUE COLLATERAL OF DEUTSCHE BANK NATIONAL TRUST COMPANY
10-3-17 [8]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to value the secured claim of Deutsche Bank National Trust Company at $0.00.

Debtors' motion to value the secured claim of Deutsche Bank National Trust Company ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8241 Mariposa Avenue, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $310,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $365,107.85. Creditor's second deed of trust secures a claim with a balance of approximately

$151,099.65. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

16. 15-22030-B-13 ROBERT ROGERS MOTION TO MODIFY PLAN
MET-4 Mary Ellen Terranella 9-11-17 [92]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The Motion to Modify Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on September 11, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

17. 17-25033-B-13 KRISTIN COBERY
JPJ-1 Nikki Farris

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-21-17 [16]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to overrule the objection, deny the motion to dismiss, and confirm the plan.

The Chapter 13 Trustee objects to confirmation on grounds that the plan does not comply with Local Bankr. R. 9004-1(c)(1)(B) because the plan filed July 31, 2017, does not contain either a wet or electronic signature of both the Debtor and Debtor's attorney.

The Debtor filed a response stating that Debtor's attorney's office inadvertently filed an unsigned copy of the plan with the court. Debtor has filed a copy of the signed Chapter 13 plan as Exhibit 1, docket 21.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed July 31, 2017, is confirmed.

The court will enter an appropriate minute order.

18. 17-25233-B-13 NICOLE SADLER
JPJ-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-21-17 [19]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtor did not appear at the meeting of creditors set for September 14, 2017, as required pursuant to 11 U.S.C. § 343.

Second, the plan payment in the amount of $551.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $563.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the Debtor has not provided the Trustee with a copy of her California income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521.

The plan filed August 22, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

19. 17-25134-B-13 MRL-2 | DAVID/SAMANTHA HEATON
Mikalah R. Liviakis | MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
10-3-17 [32]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to continue the matter to October 31, 2017, at 1:00 p.m. to allow Debtors to provide supplemental evidence by October 24, 2017.

Debtors' motion to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by the Declaration of David Heaton. Debtors are the owners of a 2008 Toyota Tundra ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $8,500.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Schools Financial Credit Union is the claim which may be the subject of the present motion.

Discussion

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). *See* 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

Here, the Debtors do not argue that the vehicle is collateral outside the scope of the hanging paragraph. Instead, the Debtors argue that only a portion of the creditor's claim, secured by the subject collateral described as a 2008 Toyota Tundra, is unprotected by the hanging paragraph because it resulted from financing for the negative-equity portion of the vehicle traded-in at the time of the Debtors' purchase of the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the portion of an automobile lender's claim attributable to negative-equity financing is not secured by a purchase money security interest (PMSI). Thus, negative equity debt is not protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to creditor on its claim. The product is the amount of the present claim that is secured by a PMSI and protected by the hanging paragraph of § 1325(a). The non-PMSI portion of the claim may be treated as unsecured so long as the value of the collateral does not support it.

The Debtors state that the vehicle's worth is $8,500.00, that the negative equity is $9,340.71, and that the creditor's present claim amount is $26,279.27. However, the

Debtors do not provide any evidence as to the total amount originally financed for the subject collateral. Thus, the court cannot yet determine the percentage of the amount originally financed that was secured by a PMSI. It follows that the court also cannot yet determine the non-PMSI percentage that financed negative equity on the trade-in vehicle.

In sum, the court cannot make a finding as to whether the vehicle's value is less than the PMSI-portion of the creditor's claim, whether the entire PMSI portion of this claim is protected by the hanging paragraph, or whether the entire non-PMSI portion of this claim (negative-equity financing) is unsupported by the collateral's value. The motion to value is continued to October 31, 2017, at 1:00 p.m.

The court will enter an appropriate minute order.

20. 17-26134-B-13 GIANNA CARTER
MS-1 Mark Shmorgon

MOTION TO VALUE COLLATERAL OF TUCSON FEDERAL CREDIT UNION
9-15-17 [9]

Tentative Ruling: The Motion to Value Collateral of Tucson Federal Credit Union has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to value without prejudice.

Debtor's motion to value the secured claim of Tucson Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Mazda 6i Sedan 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Opposition

Creditor contends that the Debtor's valuation is substantially below what it would cost her to replace the Vehicle. Creditor asserts that the Debtor has failed to provide evidence showing that the Vehicle has sustained anything other than normal wear and tear. Creditor states that the replacement value of the Vehicle is $13,400.00, a reduction from the Kelley Blue Book valuation of $14,950.00 for a base vehicle of the same make and model. The Creditor's deduction is for "wear and tear based upon its mileage as claimed by the Debtor in her bankruptcy."

Discussion

A vehicle must be valued at its replacement value. In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2).

Creditor is the lienholder of the Vehicle and asserts that the value of the Vehicle is approximately $13,400.00 based on the value provided by Kelley Blue Book reduced by wear and tear based upon its mileage as claimed by the Debtor. Yet the Debtor states nowhere in her motion or declaration the mileage of the Vehicle. The retail value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value.

Nor has the Debtor proven to the court's satisfaction the replacement value of the Vehicle. There is no evidence from the Debtor on this point. The standard is what a used car dealer would sell the vehicle for to the Debtor.

While neither parties have persuaded the court regarding their position of the value of the vehicle, the Debtor has the burden of proof. Therefore, the motion will be denied without prejudice.

The court will enter an appropriate minute order.

21. 13-33436-B-13 RAYMOND MILES MOTION TO MODIFY PLAN
LBG-2 Lucas B. Garcia 9-5-17 [56]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The Motion to Confirm First Modified Plan Dated September 5, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on September 5, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

22. 17-22648-B-13 DONALD TRECO
RAH-4 Richard A. Hall
MOTION TO CONFIRM PLAN
8-18-17 [60]
Thru #24

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Dated August 15, 2017, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, feasibility depends on the granting of motions to value collateral for Thunder Road Financial, LLC and Alaska USA Federal Credit Union. Those motions to value are denied without prejudice at Items #23 and #24.

Second, the plan payment in the amount of $1,360.00 for months 1-12 and $1,357.19 for months 13-60 do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee are $1,372.19 for months 1-12 and $1,375.00 for months 13-60 using a 10% Trustee's fee (which is the potential increase over the life of the plan from the current 8.5%). The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the motion incorrectly cites the date that the plan was filed as August 15, 2017, when it should be August 18, 2017.

Fourth, the motion states that unsecured creditors will receive a dividend of no less than 9.97% of their claim but the plan states that they will receive a dividend of no less than 10%. Based on calculations, the plan appears to calculate at no less than 10%.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

23. 17-22648-B-13 DONALD TRECO
RAH-5 Richard A. Hall
MOTION TO VALUE COLLATERAL OF THUNDER ROAD FINANCIAL, LLC
8-18-17 [70]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The Motion to Value Secured Portion of Claim of Thunder Road Financial, LLC has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to deny the motion to value without prejudice.

Debtor's motion to value the secured claim of Thunder Road Financial, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Indian Scout Motorcycle ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $10,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Thunder Road Financial, LLC is the claim which may be the subject of the present motion.

Discussion

The Debtor provides no evidence as to the date the purchase-money loan was incurred. The court cannot determine whether the Vehicle was incurred more than 910 days prior to filing of the petition. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtors' motion is denied without prejudice.

The court will enter an appropriate minute order.

24.	17-22648-B-13 RAH-6	DONALD TRECO Richard A. Hall	MOTION TO VALUE COLLATERAL OF ALASKA USA FEDERAL CREDIT UNION 8-18-17 [65]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The Motion to Value Secured Portion of Claim of Alaska USA Federal Credit Union has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, there appears to be insufficient service of process on Alaska USA Federal Credit Union. The addresses used by the Debtor do not appear on the California Secretary of State website or Alaska Corporations, Business, & Professional Licensing website. They also do not match the address where notices should be sent on Claim No. 4. In fact, it appears that the addresses used were branch addresses and a service center address of Alaska USA Federal Credit Union. Therefore, the court's decision is to deny the motion without prejudice.

The court will enter an appropriate minute order.

25.	17-20354-B-13 PGM-1	JUAN LOPEZ AND ROSALINA MARTINEZ-MACIEL Peter G. Macaluso	CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES 8-10-17 [22]

Tentative Ruling: Debtors' Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed by Champion Mortgage Company Filed July 12, 2017, has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to sustain the objection to charges filed by Campion Mortgage Company and deny without prejudice Debtors' request for attorney's fees.

The present dispute concerns $750.00 in attorney's fees requested by Champion Mortgage Company (Nationstar Mortgage, LLC dba). Specifically, Champion requests $350.00 in "Attorney's fees" and $300.00 for "Bankruptcy/Proof of claim fees." *See* Notice of Postpetition Mortgage Fees, Expenses, and Charges filed July 12, 2017. These fees purportedly were incurred for the preparation of Proof of Claim, No. #8-1, filed on May 31, 2017. Debtors object to both fees.

Debtors also request $1,200.00 in attorney's fees for having to respond to the Creditor's notice. Dkt. 22.

Discussion

Creditor bears the burden of establishing its fees are reasonable. *See In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Creditor has not met that burden. Creditor has not submitted time and/or billing records. Simply stating an amount claimed is due on the Notice is insufficient because there is no indication of the time spent on the task identified. In other words, do the $350.00/$300.00 in fees claimed represent 1 hour, .5 of an hour, or .10 of an hour? The former may be reasonable but the latter likely are not. In any case, Creditor has failed to establish that requested fees are reasonable. Therefore, Debtors' objection will be sustained and the fees requested denied without prejudice.

Additionally, Debtors' request for attorney's fees will be denied without prejudice. Debtors assert that the fees requested by Creditor are not required by the parties' agreement. If that is the case then the reciprocity statute at Cal. Civ. Code § 1717 would not apply. Debtors have not stated with specificity the grounds for an award under Cal. Civ. Code 2941. *See* Fed. R. Bankr. P. 9013.

The court will enter an appropriate minute order.

26.	17-25458-B-13 JPJ-1	JAMES/RACHEL GARIDEL Patricia Johnson	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 9-21-17 [18]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on September 27, 2017. The confirmation hearing for the amended plan is scheduled for November 14, 2017. The earlier plan filed August 17, 2017, is not confirmed.

The court will enter an appropriate minute order.

27. 17-22359-B-13 MARTY SAVSTROM MOTION TO CONFIRM PLAN
MRL-1 Mikalah Liviakis 8-22-17 [32]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The Motion to Confirm the Amended Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 22, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

28. 17-23960-B-13 SHENNEL BEASLEY MOTION TO CONFIRM PLAN
MJD-1 Matthew J. DeCaminada 8-29-17 [28]

Tentative Ruling: Debtor's Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $3,000.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor understates the amount of unsecured, non-priority, non-student loan claims that will be paid through the plan, understates the unsecured claim of Hyundai Motor Finance Company, and understates the unsecured claim of Golden Valley Lending. The plan will take approximately 73 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

29. 17-24765-B-13 KEVIN/KIMBERLEY LEWIS — MOTION TO VALUE SECURED PORTION OF CLAIM OF UNITED BANK, A CONNECTICUT CHARTERED BANK
FF-2 Gary Ray Fraley — 9-6-17 [29]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The Motion to Value Secured Portion of Claim of United Bank, a Connecticut Chartered Bank has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of United Bank, a Connecticut Chartered Bank, at $0.00.

Debtors' motion to value the secured claim of United Bank, a Connecticut Chartered Bank ("Creditor"), is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 2408 W. Hallwood Boulevard, Marysville, California ("Property"). Debtors seek to value the Property at a fair market value of $380,000.00 as of the petition filing date. Given the absence of contrary evidence, Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim

has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $411,950.00. Creditor's second deed of trust secures a claim with a balance of approximately $380,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

30. 17-25366-B-13 RAYMOND CORREA
JPJ-1 Taras Kurta

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
9-27-17 [29]

Final Ruling: No appearance at the October 17, 2017, hearing is required.

This matter is continued to October 24, 2017, at 1:00 p.m. to be heard in conjunction with Debtor's motion to value collateral for Santander Consumer USA.

The court will enter an appropriate minute order.

31. 14-31570-B-13 PAULA RAQUEL MOTION TO REFINANCE
WW-2 Mark A. Wolff 9-26-17 [23]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Authorization to Incur Debt is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion.

Debtor seeks court approval to refinance her residence located at 11 Tyndall Court, Sacramento, California ("Property") in order to lower her interest rate, lower her monthly payment, and shorten the term of her loan. Debtor currently has 33 years remaining on her current loan with PHH Mortgage. PHH Mortgage has advised the Debtor that she qualifies to refinance her residence on the following terms: amount financed $141,000; term of 30 years; interest rate of 4.23%; payment of $687.26 (principal and interest) and $882.00 (inclusive of taxes and insurance).

The motion is supported by the Declaration of Paula Raquel. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of the Debtor's ability to pay this claim on the modified terms since her monthly mortgage payment will be less than her current payment.

The repayment of the new loan does not appear to unduly jeopardize the Debtor's performance of the plan dated November 25, 2014. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

The court will enter an appropriate minute order.

32. 17-25371-B-13 SALLY ALLEN MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley 8-25-17 [12]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan Dated August 25, 2017, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the plan.

First, the plan payment in the amount of $1,854.52 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, and Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,549.33. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the plan summary attached to the end of the plan does not provide identifying information denoting it as an Additional Provisions portion of the plan and any specific language authorizing the Trustee to pay certain creditors before others.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

33. 14-29375-B-13 JAMES FETTY
RJ-8 Richard L. Jare

CONTINUED MOTION TO MODIFY PLAN
8-25-17 [116]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

This matter was continued from October 3, 2017, to allow the Debtor to file any additional evidence by October 12, 2017, showing ability and concrete plan to sell a mobile home within 6 months or to refinance.

Feasibility depends on the Debtor selling or refinancing his double wide mobile home prior to the end of the plan. The court had determined at the October 3, 2017, hearing that the Debtor presented no evidence of marketing, time frame, or ability to sell or refinance the mobile home. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The Debtor filed a supplemental pleading stating that a new development has arisen. Debtor received insurance money in the sum of $8,039.63 that he would like to pay to Murphy Bank, who holds the security interest in the mobile home, but that Murphy Bank must sign off of this. Debtor also stated in his response that he may accept dismissal of this case pursuant to the Trustee's notice of default or may propose a new modified plan depending on the Debtor's credit score. In any case, Debtor consents to the denial of this motion to modify. So at a minimum, this motion is denied without prejudice. The issue of an extension of the notice of default deadline or dismissal will be addressed at the scheduled hearing.

34. 12-39076-B-13 DONNA ROGERS MOTION TO INCUR DEBT
RHM-1 Robert Hale McConnell 9-12-17 [27]

Tentative Ruling: The Motion to Incur Debt for Approval of Vehicle Loan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee. The court will address the merits of the motion at the hearing.

The court's decision is to deny the motion and not authorize the Debtor to incur post-petition debt.

The motion seeks permission to purchase a 2017 Ford Mustang GT, the total purchase price of which is $48,096.00, with monthly payments of $884.98. According to Schedule B, the Debtor currently owns a 2010 Jeep Wrangler Sahara in good condition and the Debtor's exhibits do not indicate that her current vehicle will be used as a trade-in. Additionally, it cannot be determined whether the Debtor has been proceeding in this case in good faith since there is no information regarding the source of the $10,000.00 cash down payment for the Ford Mustang.

The Debtor does not address the reasonableness of incurring debt to purchase a brand new luxury vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor's income is above the median family income and she is therefore required to pay all of her projected disposable income to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B). The motion is denied.

The court will enter an appropriate minute order.

35. 17-25780-B-13 BRIAN JUMAWAN
RCO-33 Mikalah Liviakis

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
9-18-17 [14]

WELLS FARGO BANK, N.A. VS.

DEBTOR DISMISSED: 09/18/2017

Final Ruling: No appearance at the October 17, 2017, hearing is required.

The matter will be continued to October 24, 2017, at 1:00 p.m.

The court will enter an appropriate minute order.

36. 16-25492-B-13 JAMES STRAIN
MJD-3 Matthew J. DeCaminada

MOTION TO VACATE DISMISSAL OF CASE
9-29-17 [64]

DEBTOR DISMISSED: 09/06/2017

Tentative Ruling: Debtor's Motion to Vacate Order Dismissing Chapter 13 Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to deny without prejudice the motion to vacate dismissal.

Debtor argues that excusable neglect justifies the court vacating the order dismissing the case. Debtor states that his long-time girlfriend, Chrystal White, who contributes the lion share of Debtor's monthly income at $3,200.00 per month, was unable to provide him income to cure a delinquency of $5,429.00. A Notice of Default and Application to Dismiss was filed by the Chapter 13 Trustee on July 27, 2017, giving the Debtor until August 26, 2017, to cure the default. Debtor argues that without his girlfriend's contribution, he fell behind on payments.

According to the Declaration of Chrystal White, Ms. White was capable of curing the delinquency by making plan payments in two installments. The Declaration states that upon receipt of the Notice of Default, Ms. White contacted Sagaria Law, P.C. on behalf of her boyfriend to discuss the situation. The first installment in the amount of $2,500.00 was posted to www.ndc.org on July 8, 2017. The second installment in the amount of $3,000.00 was posted to www.ndc.org on September 7, 2017.

The Declaration states that this second installment was made after the August 26, 2017, deadline because Ms. White had to use funds - otherwise set aside as income for the Debtor - toward her vehicle repairs. The cost for vehicle parts and labor totaled $2,752.00 according to an invoice dated September 22, 2017. Dkt. 66, Exh. B

The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is not supported by cause and excusable neglect. The *Pioneer* factors includes four elements to consider: (1) the danger of prejudice to the debtor; (2) the length of the delay and the potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993).

The court will analyze elements three and four, which are most problematic.

With regard to element three, the court finds no justifiable explanation for the delay in curing the default. The Notice of Default was mailed on July 29, 2017. Ms. White stated in her Declaration that she could not provide Debtor an income since she had to spend the funds toward her September 2017 vehicle repairs. This was two months after Debtor had already become delinquent on payments. Presumably, then, Ms. White did provide an income to Debtor for the months preceding September 2017, yet there is no explanation for why Debtor fell behind on payments by July 2017.

With regard to element four, the court is not persuaded that the Debtor acted in good faith. The Notice of Default was mailed on July 29, 2017. The Debtor made no effort to contact his counsel. Instead, Debtor's girlfriend contacted Sagaria Law, P.C. "upon receipt of the notice of default" and "indicated . . . that we could make the missed plan payments in two installments, the second being made in September 1, 2017." Dkt. 68, p. 2. If this is true, then Sagaria Law, P.C. was aware that the Debtor could cure

the delinquency, albeit late, yet failed to file a motion to extend the deadline to cure the default. Sagaria Law, P.C. provides no explanation for why it failed to file such a motion before August 26, 2017.

The court finds that the Debtor's request is unsupported by a showing of excusable neglect. The motion is denied without prejudice.

The court will enter an appropriate minute order.

37. 17-24893-B-13 JAMES/DEBORAH LARSON
DAO-1 Dale A. Orthner
Thru #38

ORDER RESTORING MATTER TO CALENDAR RE: MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
9-11-17 [15]

Tentative Ruling: The court issues no tentative ruling. The motion will be determined at the scheduled hearing.

The court will enter an appropriate minute order.

38. 17-24893-B-13 JAMES/DEBORAH LARSON
JPJ-1 Dale A. Orthner

ORDER RESTORING MATTER TO CALENDAR RE: OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-13-17 [19]

Tentative Ruling: The court issues no tentative ruling. The motion will be determined at the scheduled hearing.

The court will enter an appropriate minute order.